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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,752	11/30/2001	Joachim Hecht	1903	3712

7590                  04/11/2003

STRIKER, STRIKER & STENBY  
103 East Neck Road  
Huntington, NY 11743

EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
3721	10

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/997,752	HECHT ET AL.
	Examiner Paul Durand	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
  - 2a) This action is FINAL.                    2b) This action is non-final.
  - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-12 is/are pending in the application.
    - 4a) Of the above claim(s) 5 and 9-12 is/are withdrawn from consideration.
  - 5) Claim(s) \_\_\_\_\_ is/are allowed.
  - 6) Claim(s) 1,2 and 6-8 is/are rejected.
  - 7) Claim(s) 3 and 4 is/are objected to.
  - 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 November 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6,9</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 5 and 9-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: in figure 3, reference number 20 is missing. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities:

- a. Page 12, line 11, it is not clear to the examiner which component is being referred to.

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- b. Page 12, lines 4 and 6 refer to sensing members as reference numbers 66 and 68.
- c. Page 12, line 13 refer to the tool receptacle as reference numbers 20 and 30.
- d. Page 12, lines 15 and 12 refer to the striker as reference numbers 32 and 42.
- e. Page 12, lines 7 and 8 refer to the curved track as reference numbers 7 26 and 46.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

- 5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hecht (US 6,199,640) in view of Fisher (US 5,513,709).

In regard to claim 1, Hecht discloses the invention substantially as claimed including a power tool, comprised of housing 10, drive means 14, striking mechanism 17, drive unit 11, curved tracks 22 and 23, with raised portions 221 and 231, depressed portions 222 and 232, sensing unit 21 and sensing members 40 in communication with the curved tracks (see Figs. 1,3 and C2, L42 – C3, L36). What Hecht does not disclose

is the use of a striker mounted outside the drive means. However, Fisher ('709) teaches that it is old and well known in the art of power tools provide a striker near a tool stop 108, that is mounted outside of drive means 84 and cam track 104 for the purpose of reducing the tool area (see Fig. 18 and C3, L34-51). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Hecht with the striker arrangement of Fisher ('709) for the purpose of reducing the tool area.

In regard to claim 2, Hecht discloses the invention substantially as claimed including the drive means further comprised of beater 18, that is supported axially displaceably, and abuts striker 17.

7. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hecht in view of Fisher ('709) and in further view of Fisher (US 5,427,188).

Hecht and Fisher ('709) disclose the invention substantially as claimed including a sensing unit 21 in contact with curved tracks 22 and 23. What Hecht does not disclose is the use of multiple sensing members. However, Fisher ('188) teaches that it is old and well known in the art to provide a sensing unit 44 comprised of multiple sensing members 44, that is limited in movement in an axial direction by abutment 48, which is fixed on drive means 50 for the purpose of balancing torque and bearing loads on the tool during operation (see Figs. 4 and 5). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Hecht with the sensing arrangement of Fisher ('188).

***Allowable Subject Matter***

8. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fulop, Fromm, Biersack, Wunsch, Lippacher et al, Elligson, Sanford, Bourne et al, Chen and Miescher et al have been cited to show devices having similar structure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 703-305-4962. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Paul Durand  
April 3, 2003

  
Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3721